

## APPEAL NO. 010688

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on March 15, 2001. With respect to the single issue before him on appeal, the hearing officer determined that the respondent (claimant) had disability as a result of his compensable injury from \_\_\_\_\_, through the date of the hearing. In its appeal, the appellant (carrier) argues that the hearing officer's disability determination is against the great weight of the evidence. The appeal file does not contain a response to the carrier's appeal from the claimant.

### DECISION

Affirmed.

The hearing officer did not err in determining that the claimant had disability, as a result of his compensable injury, from \_\_\_\_\_, through the date of the hearing. The disability issue presented a question of fact for the hearing officer to resolve. Section 410.165(a) provides that the contested case hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence as well as of the weight and credibility that is to be given the evidence. It was for the hearing officer, as trier of fact, to resolve the inconsistencies and conflicts in the evidence and to decide what facts the evidence has established. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701, 702 (Tex. Civ. App.-Amarillo 1974, no writ). When reviewing a hearing officer's decision for factual sufficiency of the evidence, we should reverse such decision only if it is so contrary to the overwhelming weight of the evidence as to be clearly wrong and manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986). In this instance, there is sufficient evidence in the record to support the hearing officer's disability determination, namely the claimant's testimony and the evidence from his treating doctor. There was no sole cause issue before the hearing officer and he was persuaded that the claimant's compensable injury was a factor in his inability to obtain and retain employment at his preinjury wage for the period of disability found. The matter of the weight to be assigned to the surveillance reports introduced into evidence by the carrier was a matter left to the hearing officer's discretion. Nothing in our review of the record demonstrates that the hearing officer's determination that the claimant had disability from \_\_\_\_\_, through the date of the hearing, is so against the great weight of the evidence as to be clearly wrong or manifestly unjust. Accordingly, no sound basis exists for us to reverse that determination on appeal. Cain, *supra*.

The hearing officer's decision and order are affirmed.

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Elaine M. Chaney  
Appeals Judge

CONCUR:

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Gary L. Kilgore  
Appeals Judge

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Robert W. Potts  
Appeals Judge